Wire Products Manufacturing Corporation *and* District No. 200, International Association of Machinists and Aerospace Workers, AFL–CIO. Cases 30–CA–13239, 30–CA–13374, 30–CA–13441, 30–CA–13490, 30–CA–13578, 30–CA–13625, and 30–CA–13896

September 17, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

On April 30, 1998, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief. The Acting General Counsel filed cross-exceptions, a supporting brief, and a brief in response to the Respondent's exceptions. The Respondent filed a brief in answer to the cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, as modified below, and to adopt the recommended Order as modified.[2]

1. The judge found that the Respondent violated Section 8(a)(1) of the Act by encouraging employees on February 5 and again on February 26, 1996, to join the Union for the purpose of voting against a proposed collective-bargaining agreement at a contract ratification meeting and then to revoke their union membership after voting. We agree with the judge that the Respondent's conduct was unlawful, but we find no need to rely on his reference to previous unfair labor practices committed by the Respondent as evidence of the Respondent's willingness to engage in economic reprisals against employees who support the Union. It is sufficient for purposes of finding a violation to consider the reasonable tendency of the Respondent's statements to interfere with unit employees' protected right to engage in collective bargaining through their exclusive union representative. In assessing the impact of these statements, we have taken into consideration the contemporaneous commission of another 8(a)(1) violation when, on February 5, the Respondent's agent, Ray Blankenship, told employees that if they resigned their membership from the Union, they would not be required to pay dues or fees despite the presence of a union-security clause in the proposed collective-bargaining agreement. Blankenship told employees that "the union would notify the company that a certain person [did not pay] and that would be the end of it."

The aforementioned statements undermined both the Union and the contract in the eyes of the employees. We therefore find that by encouraging employees to vote against the proposed collective-bargaining agreement and thereafter to resign from the Union, the Respondent interfered with employees' statutory collective-bargaining rights by attempting "to control their actions *vis-à-vis* contract ratification. This Respondent clearly may not do." *Endo Laboratories, Inc.,* 239 NLRB 1074, 1076 (1978).

2. The judge found that the Respondent violated Section 8(a)(5) of the Act on July 8, 1997, by unilaterally posting notice of a job vacancy in a newly created trainer classification before bargaining with the Union over the wage rate to be paid employees in the new classification. In exceptions, the Respondent contends that the allegation should have been dismissed because the Acting General Counsel failed to prove that the Respondent had established any wage rate for the trainer classification at the time of the posting. We find merit in the Respondent's exceptions.

The Respondent had the unilateral right, under the parties' collective-bargaining agreement, to establish a new trainer classification. It was also required to bargain with the Union over the mandatory subject of the trainers' wage rate. There is no evidence showing that the Respondent had set a wage rate when it posted the new job opening. Although the Respondent initially claimed that it had no obligation to bargain about either the establishment of the new classification or the wage to be paid for that classification, the record shows that it did bargain with the Union about the wage rate for this classification before filling the posted job opening or even before discussing the job with applicants. On July 25, the Respondent offered to negotiate with the Union and submitted a written proposal for the trainer classification and wage rate. The parties thereafter bargained and, according to the record in a subsequent Board case involving the same parties,[3] reached agreement on September 20. We shall therefore reverse the judge and dismiss the 8(a)(5) complaint allegation concerning the trainer classification wage rate.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Wire Products Manufacturing Corporation, Merrill, Wiscon-

[1] At various points in the judge's decision, he referred to and relied in part on another administrative law judge's decision in Cases 30–CA–12645, et al., involving the same parties as in this proceeding. On August 27, 1998, the Board issued a decision, reported at 326 NLRB 625 (1998), which affirmed each of the violations found by the judge in the earlier case and found additional violations of Sec. 8(a)(1) and (5). The Board also found that the Respondent's unfair labor practices tainted a decertification petition on which the Respondents relied in withdrawing recognition from the Union. The Board further determined that a broad injunctive order was warranted against Rayford T. Blankenship & Associates, Inc., and Rayford T. Blankenship.

[2] We shall modify the judge's recommended Order in accordance with our decision in *Excel Container*, 325 NLRB 17 (1997).

[3] *Wire Products Mfg. Corp.*, 328 NLRB No. 115 (1999).

sin, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(m) and reletter the subsequent paragraph.

2. Substitute the following for paragraph 2(e).

"(e) Within 14 days after service by the Region, post at its Merrill, Wisconsin facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 5, 1996."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively in good faith concerning wages, hours, and other terms and conditions of employment with the Union, District No. 200, International Association of Machinists and Aerospace Workers, AFL–CIO, as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees employed by Wire Products at its Mathew's and Genesee Street operations in Merrill, Wisconsin; but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL NOT encourage our employees to join the Union and then resign their membership after a scheduled union meeting.

WE WILL NOT tell our employees that they do not have to pay money to the Union under the current collective-bargaining agreement if they do not want to.

WE WILL NOT disseminate notices to our employees, advising them to join the Union for the purposes of attending and participating in a union meeting, and then to revoke their membership on the following day.

WE WILL NOT eliminate limited family class health insurance or otherwise alter benefits provided in the current collective-bargaining agreement, without first obtaining the Union's consent.

WE WILL NOT disseminate memoranda or other communications to our employees, stating that the collective-bargaining agreement does not require that they pay money to the Union.

WE WILL NOT fail and refuse to comply with article l, section 4 of the collective-bargaining agreement, which requires that we terminate unit employees who have not met the contractual requirement of paying dues or agency fees to the Union.

WE WILL NOT, without the Union's consent, change the collective-bargaining agreement's arbitration provisions by submitting requests for arbitration panels to the Federal Mediation and Conciliation Service in which we insist, as special requirements, that panels be selected only from areas numbered 15, 22, 35, and 64, or from other areas, none of which include the State of Wisconsin, and that the members of the panels be members of the American Arbitration Association.

WE WILL NOT unilaterally, without the Union's consent, reduce the bargaining unit employees' workday.

WE WILL NOT unilaterally, without the Union's consent, reduce the bargaining unit employees' workweek.

WE WILL NOT unilaterally, without the Union's consent, impose a Christmas shutdown on the bargaining unit.

WE WILL NOT repudiate the layoff procedure set forth in our contract with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request of the Union, restore the limited family class to the health insurance program covering the bargaining unit employees, and enroll the bargaining unit employees, who are eligible, into that class of health insurance coverage.

WE WILL reimburse bargaining unit employees, who were required to pay the excess premium payments as a result of our unilateral elimination of the limited family class of health insurance, beginning with the pay period ending March 16, 1996, with interest.

WE WILL make the bargaining unit employees whole for any loss of earnings and other benefits suffered as a result of our unlawful failure to comply with the collec-

tive-bargaining agreement, when we shortened their workday to 4 hours on October 31, 1996, shut the plant down on November 7, 1996, imposed a Christmas shutdown from December 19, 1996, until January 6, 1997, and repudiated the contractual layoff procedure, plus interest.

WIRE PRODUCTS MANUFACTURING CORPORATION

Joyce Ann Seiser, Esq., for the General Counsel.
Rayford T. Blankenship, Stephen D. LePage, and *R. Scott Summers (R. T. Blankenship & Associates),* of Greenwood, Indiana, for the Respondent.
Joe Cooper, of Des Plaines, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Wausau, Wisconsin, on July 8, 9, and 10, and on August 5, 1997. Upon an unfair labor practice charge filed in Case 30–CA–13239, on March 21, 1996,[1] an amended charge in Case 30–CA–13239 filed on June 4, and a further charge in Case 30–CA–13374, filed by the Union, District No. 200, International Association of Machinists and Aerospace Workers, AFL–CIO, the Regional Director for Region 30 issued his order consolidating cases and consolidated complaint on September 5 alleging that the Respondent, Wire Products Manufacturing Corporation, had violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). Thereafter, upon the Union's charge and amended charge in Case 30–CA–13441, filed, respectively, on August 5 and September 6, and upon the Union's charge in Case 30–CA–13490 filed on September 9, the Regional Director, on November 14, issued his order consolidating cases and second consolidated complaint alleging that Wire Products had again violated Section 8(a)(1) and (5) of the Act. Further, upon the Union's charge and amended charge in Case 30–CA–13578, filed, respectively, on November 12 and December 6, the Regional Director, on December 16, issued a complaint and order consolidating with Cases 30–CA–13239, et al, alleging Wire Products' further violations of Section 8(a)(1) and (5) of the Act. Upon the Union's further charge in Case 30–CA–13625, filed on December 13, the Regional Director issued a complaint and order consolidating with Cases 30–CA–13239, et al., and Case 30–CA–13578, and notice of hearing, on April 3, 1997, alleging that Wire Products had engaged in additional violations of Section 8(a)(1) and (5) of the Act. Further, upon a charge filed by International Association of Machinists and Aerospace Workers, AFL–CIO, on July 9, 1997, in Case 30–CA–13896, the Regional Director issued a complaint against Wire Products on July 29, 1997, alleging further violations of Section 8(a)(1) and (5) of the Act. Finally, at the hearing in these cases, I granted the General Counsel's motion to consolidate Case 30–CA–13896 with the above-captioned cases for hearing and decision. Wire Products, by its timely answers, denied that it had committed the alleged unfair labor practices and interposed affirmative defenses detailed below.

[1] All dates are in 1996, unless otherwise indicated.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Wire Products, I make the following

FINDINGS OF FACT

I. JURISDICTION

Wire Products, a corporation, has an office and place of business in Merrill, Wisconsin, where it engages in the manufacture and nonretail sale of wire forms and metal strippings. During the year ending December 31, 1995, Wire Products purchased and received at its Merrill, Wisconsin facility goods valued in excess of $50,000 directly from points located outside the State of Wisconsin. Wire Products admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background and Issues

On September 20, 1993, following a Board-held representation election, the Union was certified as the exclusive collective-bargaining representative of the following unit of Wire Products' employees:

> All full–time and regular part-time production and maintenance employees employed by Wire Products at its Mathew's and Genesee Street operations in Merrill, Wisconsin; but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

At the time of the Union's certification, the bargaining unit consisted of 168 employees working in two shifts. At the time of the hearing in these cases, there were approximately 50 employees in the unit, working on one shift.

In 1994 and 1995, the Union filed unfair labor practice charges against Wire Products in Cases 30–CA–12645, 30–CA–12714, 30–CA–12840, and 30–CA–12946, and against R. T. Blankenship and Associates in Case 30–CA–12860, which resulted in the issuance of consolidated complaints alleging that the Respondents in those cases had committed violations of Section 8(a)(1), (3), and (5) of the Act in dealing with Union and the bargaining unit employees.

Following a hearing, which he held on July 17–21, 1995, in Merrill, Wisconsin, Administrative Law Judge Richard A. Scully issued a decision on February 2 in which he found that Wire Products and R. T Blankenship and Associates had violated Section 8(a)(l), (3), and (5) of the Act. Judge Scully's decision is currently before the Board for review.

Specifically, Judge Scully found that the respondents had violated Section 8(a)(1) of the Act by: "[p]romulgating and enforcing overly broad rules restricting the posting and distribution of union literature and the conduct of union business on its premises"; "[i]nforming employees that a wage increase would be delayed because the Union had filed charges against it"; "[f]alsely informing employees that the union no longer represented a majority of unit employees and would no longer be their collective-bargaining representative"; "[t]hreatening to have employees arrested if they did not leave the vicinity of an employee meeting"; and, by "[c]oercively interrogating em-

ployees concerning their protected activities or those of other employees and/or about whether they have given statements to agents of the Board."

Judge Scully also found that the respondents had violated Section 8(a)(3) and (1) of the Act by: "[d]iscriminatorily failing to recall employee William Edwards from layoff since May, 1994 in order to retaliate against him for his support for the Union and to discourage such support"; "[d]iscriminatorily issuing written disciplinary warnings to employees Carol Albright and Lola Wendt in retaliation for Albright's support for the Union and to discourage such support"; and, by "[d]isciminatorily prohibiting employees on the Union collective-bargaining committee from attending an employee meeting on August 16, 1994, in order to retaliate against them for their support for the Union and to discourage such support."

Further, Judge Scully found that the respondents had violated Section 8(a)(5) and (1) of the Act by: "[w]ithdrawing recognition from the Union as the collective-bargaining representative of unit employees on February 24, 1995, and thereafter refusing to meet and bargain in good faith with the Union"; and, by "[c]hanging terms and conditions of employment of unit employees, by granting a general wage increase, by promulgating and enforcing new work rules and regulations, and by promulgating and enforcing a progressive discipline policy, without first giving the Union notice and an opportunity to bargain."

On July 20, 1995, the Acting Regional Director for Region 30 filed a petition in the United States District Court for the Western District of Wisconsin seeking a temporary injunction under Section 10(j) of the Ac, to enjoin and restrain Wire Products from engaging in unlawful conduct as alleged in the consolidated complaints before Judge Scully. The petition also sought affirmative relief, including a requirement that Wire Products bargain, on request, with the Union as the exclusive collective-bargaining representative of the employees in the production and maintenance unit described above. On September 28, 1995, District Judge Barbara B. Crabb issued an Opinion and Order in Civil No. 95-C-0524-C granting the Acting Regional Director's petition for injunctive relief.

Thereafter, on December 18, 1995, the Acting Regional Director for Region 30 filed a petition seeking adjudication and an order in civil contempt against Wire Products, and additional respondents including Roger C. Dupke, Wire Products' coowner and its president and treasurer, Robert E. Hill, Wire Products' coowner and its vice president and secretary, and Rayford T. Blankenship, Wire Products' labor representative and designated bargaining representative for having violated and disobeyed and for continuing to violate and disobey Judge Crabb's temporary injunction.

One day later, Judge Crabb issued an Order to Show Cause directing Wire Products and the other respondents to answer the civil contempt petition and appear before her on January 11. Upon the parties' request, Judge Crabb postponed this hearing to January 31. The parties entered into settlement negotiations, which resulted in further postponements of the hearing and the contempt proceedings. On March 6, the parties filed a joint motion seeking cancellation of a hearing scheduled for March 7, and approval and entry of a consent order. Wire Products, by the same motion, withdrew its motion to dismiss the contempt proceeding, which it had filed on March 1.

Judge Crabb signed the proposed consent order on March 7. Included at page 3 of the consent order was the declaration that:

> The evidence in the record before the Court on this Petition for Adjudication and Order in Civil Contempt is sufficient to establish clearly and convincingly that [Wire Products], and [Roger C. Dupke, Robert E. Hill, and Rayford T. Blankenship] were in civil contempt of provisions of the Court's September 28,1995, injunction.

On the same page, the consent order reported, inter alia, that Wire Products had bargained with the Union "as the exclusive representative of [Wire Products'] production and maintenance employees employed at its Merrill, Wisconsin facility." The consent order also reported that Wire Products and the additional Respondents had negotiated with the Union and executed a 2-year collective-bargaining agreement, effective February 26. The approved consent order also terminated the contempt proceedings.

The issues presented in the instant cases are whether a preponderance of the testimony shows that Wire Products in dealing with the bargaining unit at its Merrill, Wisconsin facility violated Section 8(a)(1) of the Act[2] by:

(1) Encouraging employees to join the Union on February 6, and to resign their membership later.

(2) Telling employees that they would not be required to pay money to the Union under the collective-bargaining agreement if they did not want to.

(3) Disseminating a notice to all employees in the collective-bargaining unit at its Merrill, Wisconsin facility advising them to join the Union for purposes of attending the Union's meeting on February 26, and further advising them on how to revoke their membership on the following day.

Further issues presented in these cases are whether a preponderance of the testimony shows that Wire Products in dealing with the Union and the bargaining unit at its Merrill, Wisconsin facility violated Section 8(a)(5) and (1) of the Act[3] by:

(1) Eliminating limited family class health insurance and converting employees in that class to family coverage without notice to the Union and without giving to the Union an opportunity to bargain with Wire Products with respect to this change.

(2) Unilaterally, without notice to the Union, and without giving to the Union an opportunity to bargain, disseminating a memorandum to employees of Wire Products stating to employees that, under the collective-bargaining agreement, they do not have to pay money to the Union.

(3) Unilaterally, without notice to the Union, and without giving to the Union an opportunity to bargain, refusing to honor

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[2] Sec. 7 of the Act provides in pertinent part:

> Employees shall have the right to self–organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8(a)(1) of the Act provides:

> It shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

[3] Sec. 8(a)(5) of the Act makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees."

the Union's requests that Wire Products terminate employees for failing to pay membership dues or agency fees, as provided in the current collective-bargaining agreement.

(4) Unilaterally, without notice to the Union, and without giving to the Union an opportunity to bargain, submitting requests for arbitration panels to the Federal Mediation and Conciliation Service in which Wire Products insists that the panels be drawn from areas of the United States other than the State of Wisconsin and that members of the panels be members of the American Arbitration Association.

(5) Unilaterally, without notice to the Union, and without giving to the Union an opportunity to bargain, reducing the hours of the work day on October 31 from 10 hours to 4 hours, announcing on November 5 that employees would only work for 3 days that week, and on November 7, reducing the work week from 4 10-hour days to 3 10-hour days.

(6) Unilaterally, without notice to the Union, and without giving to the Union an opportunity, to bargain, announcing on November 25 that Wire Products would be closing for the holiday season, from December 19 until January 6, 1997.

(7) Unilaterally, without notice to the Union, and without giving to the Union an opportunity to bargain with respect to qualifications, labor grade, wage rate, and other matters regarding the new job classification, posted a job vacancy in the newly created job classification of trainer.

Finally, in its amended answer to the consolidated complaints in these cases, Wire Products contended that the Union secured the current collective-bargaining agreement referred to in these cases "by fraud and gross misrepresentation."

B. Interference, Restraint, Coercion, and Repudiation of the Union-Security Provision

1. The facts

On January 30 or 31, Union Business Agent James Cveykus Sr. posted and left copies of a notice at Wire Products' plant announcing a union meeting to be held on February 6. The announced purpose of the meeting was "to vote on the tentatively agreed to contract." The contract to which the notice referred was part of Wire Products' effort to settle the contempt proceeding initiated by the Regional Director for Region 30. The Union's notice also instructed the employees to obtain a membership application from "a Committee Representative" or at the meeting.

The Union and Wire Products met on February 5 to review the final draft of their agreement. However, the Union found that the draft did not include items, which the parties had agreed to, that there were some additions to which there had been no agreement, and that the wage schedule was missing. Thus, when the employees came to the meeting on the following day, the Union's grand lodge representative, Daniel VandeKolk, apologized and explained that the Union would get together with Wire Products and attempt to reach an agreement.

On February 5, Rayford T. Blankenship, of the labor relations consulting firm of R. T. Blankenship and Associates, acting on behalf of his firm's client, Wire Products, conducted a meeting in the lunchroom at the Merrill plant, attended by approximately 50 employees of the first shift at the end of their workday. In his remarks, Blankenship encouraged the assembled employees "to go and vote on the contract, to join the union, vote, and the next day they could get out of the union."

Blankenship also spoke about the payment of union dues or agency fees under the proposed collective-bargaining agreement. He explained that if an employee did not pay them, "the union would notify the company that a certain person [did not pay][4] and that would be the end of it.[5]

On February 6, after the Union's meeting with the bargaining unit employees had ended, Blankenship, telefaxed Wire Products' positions on contract issues outstanding. Thereafter, on February 26, Wire Products by its President Roger Dupke, and the Union, by its representative, Daniel L. Vande Kolk, executed their current collective-bargaining agreement subject to ratification by the bargaining unit employees.

On February 20 or 21, the Union posted and distributed notices to the bargaining unit employees at Wire Products' Merrill plant, announcing a meeting to be held by the Union on Monday, February 26. The announced purpose of the meeting was to vote on the tentatively agreed to collective-bargaining agreement. The notice advised the employees to obtain a membership application either from "a Committee Representative" or at the meeting.

I find from the uncontradicted testimony of the General Counsel's witnesses, Pfingsten and Albright, that on the morning of February 26, prior to the Union's meeting, Wire Products posted copies of a notice on bulletin boards and, and left copies of it on tables in its breakroom, at the Merrill plant. I find from employee Phyllis Duellman's testimony that Wire Products might have mailed copies of the same notice to its employees.

Wire Products' notice was addressed to "All Employees" from "Roger Dupke." However, I find from Dupke's testimony that he was out of town when Wire Products prepared and distributed this notice. I also find from Dupke's testimony that R. T. Blankenship and Associates had authority to prepare and distribute this notice to Wire Products' employees. At the hearing, Rayford Blankenship expressed willingness to admit that Wire Products posted the notice. Later in the hearing, his associate, R. Scott Summers conceded, on the record, that Wire Products posted this notice and that employees saw it. In light of these admissions, and the credited testimony recited above, I find that R. T. Blankenship and Associates, acting on behalf of Wire Products posted this notice and left it on tables in the break room at the Merrill plant on February 26, and that employees saw it on that date, prior to the Union's meeting.[6]

Wire Products' notice, ostensibly from Roger Dupke, seen by its employees on February 26, read as follows:

> It has been brought to my attention that some of our employees want to attend the union meeting to vote against a union contract. However, they do not want to be bound to the union because by having to sign a union card so they can vote.

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[4] It appears that the bracketed words were inadvertently omitted from the transcript. The General Counsel's unopposed request, in fn. 5 of his brief, to correct the transcript in this regard is granted.

[5] I based my findings regarding Blankenship's remarks to Wire Products' employees on February 5 upon employee Carol Albright's uncontradicted testimony, which she provided in a straightforward manner. I also noted that the testimony of former employee Clifford Pfingsten Jr. largely corroborated Albright's testimony in this regard. Pfingsten worked for Wire Products for 15 years, until August 19.

[6] At the hearing, counsel for the General Counsel, upon motion, which I granted, amended the second consolidated complaint to reflect President Dupke's testimony showing that Rayford T. Blankenship participated in the dissemination of this notice and other notices discussed later in this decision.

> You should know that you have a right to sign such a card for purposes of this vote and the following day give the union a letter of revocation. The way you revoke your signature is by simply adding the following statement: "I revoke the authorization card I have signed with the union." Sign and date this statement, and give it to a union officer or member of the bargaining committee. (be sure to keep a copy for yourself). If you do this you will not be bound to the union.
>
> Please remember I cannot advise you one way or the other. However, if you do not want a contract it will be important for you to vote against it at this meeting. On the other hand, if you want a union contract, vote for it; these are your rights.
>
> I am sorry this union is now playing games with you; the very games we told you about before the NLRB election three years ago. I can only assist you in understanding what is happening so you can control your own destiny.

The Union conducted the scheduled meeting with Wire Products' employees on February 26. By a vote of 26 to 2, the employees ratified the collective-bargaining agreement, effective from February 26 until February 26, 1999.

The General Counsel's second consolidated complaint alleged, and Wire Products' answer to that complaint admitted, that:

> Article I, Section 4 of the collective-bargaining agreement is a union security clause which states in Section 4.1: All employees in the bargaining unit must as a condition of continued employment be either a member of the union and pay union dues or pay an agency fee to the union, but not both.
>
> Article I, Section 4.4 of the collective-bargaining agreement provides:
>
> Any employee required to pay an agency fee, membership dues, or initiation or reinstatement fee *as a condition of continued employment* who fails to tender the agency fee, reinstatement, or periodic dues uniformly required, shall be notified in writing of their delinquency. A copy of such communication shall be mailed to the company not later than fifteen (15) days prior to such request that *the company take final action on the delinquency.* [Emphasis added.]

Under section 1 of article XXIV of the collective-bargaining agreement, which article is entitled "Management Rights," Wire Products retains the right to "discharge employees for just cause." Nowhere in the contract did Wire Products agree to surrender any portion of this right to the Union. Thus, only Wire Products can discharge a bargaining unit employee.

Turning to the union-security provisions quoted above, I find that the parties have agreed that payment of union dues or an agency fee in accordance with the terms of those provisions is required of each bargaining unit employee who wishes to remain in Wire Products' employ. Further, under the plain meaning of those provisions, if a bargaining unit employee becomes delinquent in satisfying that obligation, the Union is required to notify the employee of his or her delinquency, in writing, and provide a copy of that notice to Wire Products. The required payment is referred to in the collective-bargaining agreement as a *condition of employment,* or as *a condition of continued employment.* Thus, a unit employee's delinquency in this regard is a violation of that condition which must result in his or her discharge. Section 4.4 mandates that the Union must give notice to Wire Products of the delinquency at least 15 days before the Union can request Wire Products to discharge the delinquent employee. The plain meaning of Section 4.4 is that, upon timely notification, Wire Products must take the *final action,* i.e., discharge the delinquent employee. If *final action* does not translate into discharge by Wire Products, the payment of dues or fees is neither a *condition of employment*, nor a *condition of continued employment* and the union-security provision is meaningless.

The second consolidated complaint alleges, and Wire Products' answer to that complaint admits, that President Roger Dupke disseminated the following memo to its employees on April 24. However, at the hearing, counsel for the General Counsel amended the second consolidated complaint to reflect Dupke's testimony that Rayford T. Blankenship participated in the dissemination of this memo, which told the employees:

> It has come to my attention that there are employees threatening other employees with possible credit problems or outright financial ruin if the employee does not pay to the union monthly dues.
>
> So it is clear, the Company's position is that those employees who do not want to become a member of the union do not have to pay union dues under the contract. Some people in the shop might tell you otherwise and try to get you to pay money you do not have to pay under the terms of the agreement.
>
> Should you experience such threats or feel intimidated, you should report the incident(s) to your supervisor immediately. Be assured that these threats will be treated seriously and handled under the appropriate Company rules. The agreement give (sic) the parties involved many rights– threatening employees is not one of them. Each of you has a right to work in an environment free of threats.
>
> For those of you who do not want to be in the union, my hope is that you will not buckle under to these threats now that you are aware of the Company's position on this issue.

In the autumn, Wire Products posted and left a notice on lunchroom tables, at its Merrill plant, in which it repeated its position regarding the employees' obligation to pay dues and fees to the Union. The notice, addressed to "All employees" stated:

> It has been brought to our attention that certain union stewards in our plant have told our new employees that they have to join this union and pay the union monthly dues and fees.
>
> I want to make the Company's position on this issue perfectly clear. This Company will not force you to join this union or pay this monthly dues and/or fees. You do have the right to do so although if *you* choose to. This Company will not terminate you if you choose not to.

The Union sought to enforce the collective-bargaining agreement's union-security provision, beginning April 1. By letters dated July 9, to each of 24 unit employees, the Union notified them of their individual obligation to pay monthly dues or a monthly agency fee of $16, starting with April 1. Each of the letters explained that this obligation arose under article I, section 4 of the current collective-bargaining agreement. Con-

tinuing, each letter asserted that the Union's records showed that the addressee had not made any payment of their "financial obligation." The letter told each employee that he or she was required to pay the "specified amount" to the Union "within fifteen (15) days of the date of this letter."

In letters dated July 25, the Union notified the same 24 unit employees that they were delinquent in their payment of dues or agency fees for April, May, and June. The letter requested the addressee to pay the $48 to the Union on or before August 9. If the addressee failed to make this payment by that date, the Union would request Wire Products to terminate his or her employment. The Union sent copies of each of the 24 letters to Wire Products.

On August 9, the Union sent 24 letters to President Dupke demanding that Wire Products terminate each of the employees who had failed to make the required payment of dues or agency fees. Each of the named employees received a copy of the Union's letter to Dupke. Wire Products has not responded to the Union's termination requests and has not terminated any of the 24 employees.[7]

From August 12, until May 30, 1997, the Union followed the same procedure recited above for 18 other bargaining unit employees who failed to make payments to the Union, as required by article I, section 4, of the collective-bargaining agreement. Wire Products has neither responded to the Union about the termination requests for any of these 18 employees. Nor did Wire Products terminate any of the 18 employees as requested by the Union.[8]

2. Analysis and conclusions

a. Wire Products' advice to its employees

The General Counsel contends that Rayford T. Blankenship's remarks to Wire Products' employees on February 5, and the notice Wire Products disseminated prior to the Union's meeting with the employees on February 26, violated Section 8(a)(1) of the Act on the grounds that they interfered with the employees' rights, under Section 7 of the Act, to attend union meetings and vote on a proposed collective-bargaining agreement. In addition, the General Counsel argues that Wire Products' assertion to its employees that the proposed collective-bargaining agreement did not require that they make any payments to the Union also ran a foul of Section 7 of the Act. Wire Products urges dismissal of these allegations on the ground that this conduct did not violate the Act. Further, Wire Products contends that the complaint allegations regarding its conduct on February 5 and 26 were barred by Section 10(b) of the Act because there was no unfair labor practice charge filed with respect to that conduct.

In examining Wire Products' remarks to the bargaining unit employees on February 5, and its notice to them shortly prior to the Union's meeting of February 26, I find no threat of economic reprisal. Nor do I find any offer of benefit if the employees abandon the Union. However, guided by Board policy, I have considered whether those remarks and the notice, respectively, tended to interfere with the free exercise of employee rights under Section 7 of the Act. *Williamhouse of California, Inc.*, 317 NLRB 699, 713 (1995). In assessing the possible impact of Wire Products' statements to its employees regarding their participation in the collective-bargaining process or support for the Union, I have taken into account the economic dependence of those employees on their employer. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969). Further, I have noted Judge Scully's findings showing Wire Products's willingness to engage in economic reprisals against employees who support the Union.

I find that Rayford T. Blankenship's remarks to Wire Products' employees on February 5 encouraging them to join the Union, vote on the contract, and quit the Union on the following day interfered with the employees rights under Section 7 of the Act to support the Union and to engage in collective bargaining. The message to the employees was that Wire Products wanted them to vote on the contract, but withhold their support from the Union. Employees aware of their employer's hostility toward the Union and those who supported it were likely to be discouraged from joining the Union and voting for the proposed contract.

Continuing its effort to discourage its employees from supporting the Union, Wire Products promulgated a notice to them on February 26, which again interfered with their rights under Section 7 of the Act. The notice encouraged employees to sign a union card, and vote against the proposed contract. Continuing, the notice advised them that they could escape from being "bound to the union" by revoking their authorization card. In an effort to escape a finding that the notice was unlawful, Dupke, its ostensible source, asserted that "he cannot advise you one way or the other," However, he goes on to stress the importance of voting against it "if you do not want a contract." In another effort to neutralize this advice, Dupke suggests that if the reader wants the contract, "vote for it; these are your rights." In the final paragraph, Dupke tells the reader that "this union is playing games with you" and that he is assisting the employees in understanding what is happening "so you can control your own destiny." Here, again is a final hint of Wire Products' suggestion that the reader get rid of the Union by rejecting the contract. Thus, was Wire Products attempting "to control the employee[s'] actions *vis–a–vis* contract ratification. This Wire Products may not do." *Endo Laboratories, Inc.,* 239 NLRB 1074, 1076 (1978). In sum, I find that the thrust of Wire Products' notice prior to the Union's meeting on February 26 was to encourage the employees to withhold support from the Union and reject the proposed collective-bargaining agreement.

Blankenship's further advice on February 5, was designed to suggest that Wire Products had no respect for the proposed contract and would not comply with the article I, section 4, the union-security provision. He told the employees that they could withhold payment of dues or the agency fee to the Union without fear that Wire Products would honor union requests for their discharge. Yet, employees reading the proposed collective-bargaining agreement would see that it included a union-security clause requiring employees to pay either monthly dues or monthly agency fees to the Union as a condition of retaining their jobs. The provision also required that Wire Products, upon a timely request from the Union, discharge any unit employee who failed to satisfy that requirement. Thus, Blanken-

[7] In its answer to the second consolidated complaint, Wire Products admits that the Union notified it, by separate letters dated August 9, that 24 employees had failed to comply with art. I, sec. 4, of the collective-bargaining agreement, and demanded that Wire Products terminate them for failure to comply. My findings regarding the Union's efforts to enforce the union-security provisions of art. I, sec. 4, of the contract are based on Business Agent Cveykus's uncontradicted testimony and that of employee Phyllis Duellman.

[8] The evidence shows that 1 of the 14 employees, Mark Allen, quit in May 1997.

Blankenship was suggesting that Wire Products would not live up to the proposed contract. By this suggestion, I find that Wire Products interfered with its employees' Section 7 right to bargain collectively. *Laverdiere's Enterprises,* 297 NLRB 826, 831 (1990); *Vincent Brass & Aluminum Co.,* 264 NLRB 334, 339 (1982).

Wire Products contends that Section 10(b) of the Act bars litigation of the complaint allegations regarding its meeting with employees on February 5, and its notice to employees issued prior to the Union's meeting on February 26, on the ground that there was no unfair labor practice charge filed with respect to either its conduct on February 5 or its notice to employees which it disseminated on or before February 26. The pertinent portion of Section 10(b) of the Act provides that: "[N]o complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the Board." There was no charge filed specifically alleging any unfair labor practice growing out of Blankenship's meeting with Wire Products' employees. However, the General Counsel relies on the unfair labor practice charge filed on June 10 in Case 30–CA–13374, less than 6 months after February 5 and 26, as the timely charge supporting the disputed allegations in the consolidated complaints. That unfair labor charge included an allegation that Wire Products' notice to its employees, dated April 24, violated Section 8(a)(1), (3), and (5) and Section 8(d) of the Act. I find merit in the General Counsel's position.

In *Nickles Bakery of Indiana,* 296 NLRB 927, 928 (1989), the Board held that otherwise untimely 8(a)(1) complaint allegations must be closely related to the alleged unfair labor practice allegations recited in the underlying charge. *Nickles,* supra (296 NLRB at 928*),* recited the following three factors which comprise the Board's "closely related" test:

> First, the Board will look at whether the otherwise untimely allegations involve the same legal theory as the allegations in the pending timely charge. Second, the Board will look at whether the otherwise untimely allegations arise from the same factual circumstances or sequence of events as the pending timely charge. Finally, the Board may look at whether a respondent would raise similar defenses to both allegations.

The General Counsel has alleged that Wire Products' memo to its employees dated April 24 and Blankenship's remarks on February 5 told the same employees that they had no obligation under the collective-bargaining agreement to pay money to the Union. Wire Products' notice to its employees, which it posted and distributed at its plant prior to the Union's meeting on February 26, echoed that message. This notice strongly suggested that if the employees executed a membership application for the Union and then executed a withdrawal, they would be free of any obligation to the Union. The General Counsel contends that these messages in February, showed Wire Products' intent to alter the plain meaning of the contract's union-security provisions and thereby violate its collective-bargaining obligation under Section 8(a)(5) and Section 8(d) of the Act. The legal theory joining the three alleged violations is that the collective-bargaining agreement which the parties executed on February 26 contained a union-security clause which required the payment of monthly dues or fees by the bargaining unit employees as a condition of employment for the three alleged violations.

The three alleged violations also satisfy the second factor which *Nickles* sets forth. For all three allegations represent components of Wire Products' campaign to discourage its employees from supporting the Union. In February, Blankenship and Dupke, in substance, were telling the employees to ignore the union-security clause and encouraging the same employees to withhold support from the Union by directing them to vote against the contract and revoke their membership applications. By their notice of April 24, Blankenship and Dupke were again discouraging the employees from supporting the Union by announcing that Wire Products would not assist in the implementation of the union-security clause and that the employees need not pay dues to the Union.

The third factor set forth in *Nickles* is present here. Wire Products has admitted that the union-security clause in its current contract requires that bargaining unit employees pay monthly dues or fees to the Union as a condition of continued employment. However, it has denied that upon timely request from the Union, Wire Products must terminate an employee who has failed to satisfy that requirement. Based upon this interpretation of the contract, Wire Products has denied that its failure to comply with such requests violated Section 8(a)(5) and (1) of the Act. In its posthearing brief, Wire Products raised the same defense to the allegations that its conduct on February 5 and 26 violated Section 8(a)(1) of the Act. Thus, I find that Wire Products has raised the same argument in defending the complaint allegations arising from that conduct and its memo of April 24 to its employees.

In sum, I find that Section 10(b) of the Act did not bar the allegations in the second consolidated complaint regarding Blankenship's remarks to the bargaining unit employees on February 5 and Wire Products' notice to the employees issued on or before February 26. I find therefore for the reasons set forth above that by those remarks the content of that notice Wire Products violated Section 8(a)(1) of the Act.

b. Repudiation of the union-security provision

The General Counsel contends that Wire Products violated Section 8(a)(5) and (1) of the Act by repudiating, and refusing to honor, the union-security clause in the collective-bargaining agreement. Specifically, the General Counsel complains that Wire Products by it notice to employees of April 24 and its refusal, since August 9, to honor the Union's timely requests for the discharges of employees who have not satisfied the payment requirements of article I, section 4 of that agreement has failed and refused to bargain in good faith. In its answer to the second consolidated complaint, Wire Products admitted that by the conduct complained of by the General Counsel it "failed to continue in full force and effect all the terms and conditions of the [collective-bargaining agreement with the Union]." However, in its brief to me, Wire Products argues that article I, section 4, of the agreement does not require it to do anything upon the Union's request that it discharge an employee for nonpayment of dues or fees. Wire Products does not agree that *final action* means discharge.

The second consolidated complaint asserts, and I have found above, that article I, section 4, of the collective-bargaining agreement states that all bargaining unit employees must as a condition of continued employment either pay dues or an agency fee to the Union. In its answer to the second consolidated complaint, Wire Products admitted these assertions. I have also found that the enforcement of the condition of employment contemplated by article I, section 4 culminates in Wire Products' compliance with the Union's timely requests

for the discharge of the employees who have failed to make the contractually required payments to the Union. The Board has recognized that an employer's unilateral repudiation of a union-security clause and refusal to honor such a clause constitutes an unfair labor practice in violation of Section 8(a)(5) and (1) of the Act. *Litton Systems, Inc.* 283 NLRB 973, 976 (1987); *California Blowpipe & Steel Co.,* 218 NLRB 736, 748 (1975). I find from its memorandum to employees dated April 24, and its failure to honor the Union's requests for the termination of employees who have not met the contractual payment requirements, that Wire Products has violated Section 8(a)(5) and (1) of the Act.

Wire Products has raised as an affirmative defense the contention that its collective-bargaining agreement is voidable on the ground that the Union secured it "by fraud and gross misrepresentation." The General Counsel contends that the record does not support Wire Products' position in this regard. Wire Products asserts in its brief, that it agreed to the collective-bargaining agreement set forth in the instant cases, on condition that the Union withdraw its unfair labor practice charge in Case 30–CA–13090, against Wire Products, Rayford T. Blankenship & Associates, Inc., and Rayford T. Blankenship, and the Union has failed to withdraw the charge. However, I find that the record does not support these assertions.

There has been no showing that Wire Products executed the collective-bargaining agreement on February 26 in reliance upon the withdrawal of the charge in Case 30–CA–13090. Indeed, in a letter to the Union's representative, Daniel VandeKolk, dated February 6, explaining Wire Products' positions on outstanding contract provisions, Rayford T. Blankenship did not mention withdrawal of the charge in Case 30–CA–13090 as the quid pro quo for the concessions it was making in the contract. Instead, he wrote: "The below is what we understand is required to reconcile the contempt and contract matters." Clearly, Blankenship was referring to the contempt proceeding instituted by the Acting Regional Director for Region 30 of the Board against Wire Products, Roger C. Dupke, Robert E. Hill, and Blankenship. Nor was there any testimony by any participant in the negotiations leading up to the execution of the contract on February 26 showing that Wire Products' representatives required withdrawal of the charge in Case 30–CA–13090 as a condition for President Dupke's signature. In a letter to the Union, Attorney R. Scott Summers, writing on behalf of Wire Products recited his understanding of agreements reached by the parties at a negotiating session on January 25. Absent from Summers' recitation, was any mention of the withdrawal of an unfair labor practice charge.

The testimony of Union Representative Joe Cooper shows that avoidance of a contempt determination by Judge Crabb was Wire Products' motive in entering into a contract with the Union. Rayford T. Blankenship's letter of March 5 to the Union complained that as of that date, the Union had not lived up to its agreement to contact counsel for the General Counsel and "facilitate the dismissal of the contempt proceedings." Two days later, Judge Crabb approved the consent order and terminated the contempt proceedings.[9]

In a letter dated July 19, R. Scott Summers, on behalf of Wire Products, for the first time, asserted that he made concessions in the current collective-bargaining agreement with the understanding that the Union would withdraw the unfair labor practice charge in Case 30–CA–13090. However, I find from the evidence recited above, that the record does not support this self-serving assertion. I also noted that Summers did not testify at the hearing in these cases. In sum, I find no merit in Wire Products' claim that it was the victim of fraud at the time it executed its current collective-bargaining agreement with the Union.

In a further effort to avoid findings that it violated the Act by failing and refusing to honor the collective-bargaining agreement, Wire Products contended, as an affirmative defense, that the General Counsel must defer the issues regarding that agreement to the arbitration procedure set forth in that agreement. Wire Products insists that the Board's policy expressed in *Collyer Insulated Wire*, 192 NLRB 837 (1971), requires such deferral. The General Counsel urges rejection of deferral in these cases on the ground that Wire Products shown enmity toward the principles of collective bargaining. I find merit in the General Counsel's position.

The Board has been willing to defer its jurisdiction to contractual grievance-arbitration procedures provided that several factors were present. A key factor, which the Board has declared necessary to permit deferral, has been whether "the dispute arose within the confines of a long and productive collective-bargaining relationship and there was no claim of employer animosity to the employees' exercise of protected rights." *Paragon Paint & Varnish Corp.*, 317 NLRB 747, 770 (1995). The Board expressed this principle in *United Aircraft Corp.*, 204 NLRB 879 (1972), as follows:

> We continue to believe that an exploration of the nature of the relationship between the parties is relevant to the question of whether in a particular case we ought or ought not defer contractually resolvable issues to the parties' own machinery. Where the facts show a sufficient degree of hostility, either on the facts of the case at bar alone or in the light of prior unlawful conduct of which the immediate dispute may fairly be said to be simply a continuation, there is serious reason to question whether we ought defer to arbitration.

Here, I have found that Wire Products has rejected the collective-bargaining process by repudiating the union-security clause and then flatly refusing to honor its terms. In addition before its employees ratified the current collective-bargaining agreement, Wire Products unlawfully interfered with their Section 7 right to engage in collective bargaining. Finally these violations followed in the wake of Judge Scully's findings in *Wire Products Mfg. Corp.*, Cases 30–CA–12645, et al. (JD–9–96 February 2, 1996) that Wire Products violated Section 8(a)(5) and (1) of the Act on February 24, 1995, by withdrawing recognition from the Union as the collective-bargaining representative of the unit employees, and thereafter refusing to meet and bargain with the Union, and by making unilateral changes in its employees' terms and conditions of employment. In these circumstances, I find deferral to the contract's griev-

[9] The allegations in Case 30–CA-13090 were included with other allegations of unfair labor practices in the Acting Regional Director's petition in the contempt proceeding. Thus, contrary to Wire Products' contention in its brief, and Cooper's testimony, that there would not have been any contempt proceeding without that unfair labor practice charge, the petition in the contempt proceeding recited many other alleged violations of the Act not mentioned in the charge in Case 30–CA–13090. Thus, it appears unlikely that the withdrawal of that charge would have resulted in withdrawal of the contempt proceeding.

ance and arbitration procedure inappropriate. *Paragon Paint Corp.,* supra at 770.

C. The Elimination of Limited Family Class Health Insurance

1. The facts

Section 1, article XVIII of the current collective-bargaining agreement between Wire Products and the Union, entitled "Group Insurance," provides that: "The current group insurance policy shall remain in effect for the life of the contract or until the parties agree to a substitute group insurance plan, provisions of which are outlined in Article XX § 2."[10] I find from Daniel VandeKolk's testimony, that as of February 26, the ratification date of the current collective-bargaining agreement the group insurance plan in effect at Wire Products' plant included health benefits under three options, single coverage, limited family class coverage, and full family class coverage. Single covered the individual employee, full family covered the employee and his entire family, and limited coverage was for the employee plus one dependent. I also find from VandeKolk's testimony that the health insurance policy, as it existed during contract negotiations, was set forth in the North Central Health Protection Plan and yearly announcements for 1993, 1994, and 1995, in which Wire Products advised its employees of increases in the employees' weekly contributions to the insurance premiums. These announcements set forth the weekly contributions for single, limited family and full family coverage.

I find from the testimony of Dennis Glenn, Wire Products' office manager, that as of July 10, 1997, the North Central Health Protection Plan had been in effect at the Merrill plant for about 7 years. I also find from Glenn's testimony that this plan replaced a health plan which had three coverage's and three premium rates, single, full family, and limited family. When Wire Products changed to the current plan, which had only single and full family coverage, it decided to maintain the limited family premiums and its subsidy to those employees who had elected the limited family coverage. North Central classified those who were paying the limited family premiums as full family participants. Wire Products maintained this policy until March 13.

I also find from Glenn's testimony that during negotiations of the current collective-bargaining agreement, Wire Products gave to the Union a list of payroll deductions that were made from the employees' wages for health insurance. This list included single, full family, and limited family premium deductions. As of February 26, the weekly deduction for limited family coverage was $28.93, and $35.27 for full family coverage. On that date, Wire Products' group health insurance policy consisted of the North Central Health Protection plan and the memorandum from President Dupke to his employees, dated June 26, 1995, which announced the latest premium increases for the three classes of coverage and increased employee contributions in each coverage class.

On March 13, Wire Products posted a notice on its bulletin board at the Merrill Plant. The notice, signed by President Dupke and Vice President Robert E. Hill contained several announcements, among which was the following:

> The Limited Family Class for Health Insurance is eliminated. Those currently in this class will have the Family Coverage premium deducted from the payroll check dated 3/21/96 for the period ending 3/16/96.

I find from VandeKolk's testimony that prior to March 13, Wire Products gave no notice to the Union of its intention to eliminate limited family class health insurance and require those employees in that class to pay for full family coverage. I also find from VandeKolk's testimony that Wire Products did not afford the Union any opportunity to bargain collectively on behalf of the bargaining unit employees regarding these changes. Instead, on March 14, R. T. Blankenship & Associates, on behalf of Wire Products, provided a copy of the notice to the Union.

On March 21, the increased premium was deducted from the payroll checks of the following bargaining unit employees:

Christopher D. Duginski	Katherine Lange
Karen Bushar	Cecilia Boyd
Terri Allen	Virginia Krueger
Gary R. Messerschmidt	Angelita Busterud

2. Analysis and conclusions

The General Counsel urges me to find that Wire Products violated its obligation to bargain in good faith by terminating the limited family class from its group health coverage in March 1996. An employer violates Section 8(a)(5) and (1) of the Act by implementing changes in terms or conditions of employment set forth in an existing collective-bargaining agreement, absent the union's consent. *Nestle Co.,* 251 NLRB 1023 fn. 3 (1980). It is undisputed that health insurance benefits are terms and conditions of employment and, therefore, they constitute a mandatory subject of bargaining. *Pioneer Press*, 297 NLRB 972, 976 (1990). However, Wire Products asserts that the current collective-bargaining agreement eliminated the limited family coverage for health insurance. Therefore, the withdrawal of that benefit did not run afoul of Section 8(a)(5) and (1) of the Act. Wire Products assertion is wide of the mark.

Article XVIII carries the assurance that the group health insurance policy in effect on February 26 shall remain in effect for the life of the current collective-bargaining agreement or until the parties agree otherwise. The word "policy" refers to Wire Products' policy, which included not only the North Central Health Protection Plan, but also the payment of premiums, and Wire Products' contributions to those payments. The list of payroll deductions, which Wire Products furnished to the Union during negotiations, was part of the group health insurance policy covering the bargaining unit employees. Under Section 8(d)(2) of the Act,[11] after the current contract's execution and ratification on February 26, Wire Products could not eliminate any of the three classifications of coverage reflected on that list

[10] The phrase "provisions of which are outlined in Article XX § 2" is surplusage which was inadvertently included in art. XVIII, § 2.

[11] Sec. 8(d)(2) of the Act provides, in pertinent part:

> That where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract unless the party desiring such termination or modification—
>
> . . . .
>
> (2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modification.

without the Union's consent. *Tecumseh Products Co.*, 285 NLRB 781, 785 (1987).

Even if the current collective-bargaining agreement makes no specific reference to the limited family classification of coverage and its premium, that benefit had been available to Wire Products' employees since 1987 or 1988, according to Office Manager Glenn, and thus had become a term and condition of employment by March 13. In these circumstances, Wire Products was not at liberty to terminate that classification unilaterally, without consulting the Union. *Suffolk Child Development Center,* 277 NLRB 1345, 1349 (1985).

Based upon the foregoing analysis, I find that Wire Products unilaterally altered the group insurance policy covering the unit employees by eliminating the limited family classification of health insurance and raising the premiums to be paid by employees in that classification to the full family level, without prior notification to, or bargaining with the Union about those changes. I further find, that by this conduct, Wire Products has violated Section 8(a)(5) and (1) of the Act.

D. Wire Products' Implementation of the Contract's Arbitration Procedure

1. The facts

In pertinent part, article XXIII, section 1 of the current collective-bargaining agreement between Wire Products and the Union provides:

> If the Union does submit a grievance to arbitration, the parties shall jointly request the Federal Mediation and Conciliation Service to submit a panel of seven (7) experienced arbitrators. Either party may request a second panel. The parties shall alternately strike names from the panel until one name remains and that person shall be the Arbitrator. More than one grievance may be submitted to the Arbitrator at the same hearing, if agreed, between the Company and the Union . . . . The fees and expenses of the Arbitrator and the arbitration shall be shared equally between the parties.

On May 6, the Union filled out four Federal Mediation and Conciliation Service (FMCS) forms entitled "Request For Arbitration Panel" in an effort to obtain arbitration for four grievances under the quoted contract provision. Union Representative VandeKolk completed the request forms, signed them, and forwarded them to R. T. Blankenship's office for signature. Stephen D. LePage signed the forms and returned them to VandeKolk, who sent them to FMCS. None of these requests set forth any special requirements. In a letter to LePage and VandeKolk, dated June 13, FMCS answered the request for a panel on a grievance concerning work rules efficiency rates. FMCS submitted a panel of seven arbitrators, from whom the parties were to select one for this grievance. FMCS replied in a similar fashion to each of the remaining three request for arbitration panels.

VandeKolk contacted LePage to begin the selection of arbitrators. LePage replied that Wire Products intended to exercise their contract right to request a second panel. VandeKolk filled out three new request forms dated August 5 and sent them to LePage at R. T. Blankenship & Associates. LePage returned the forms with his signature and in the blank space on the form marked Special Requirements, he listed "35, 15, 22, 64, Member of AAA." By listing these numbers, LePage was using an FMCS code to reflect Wire Products' requirement that the selection of panel members was limited to the designated geographical areas. Thus, 35 meant western New York State, eastern Ohio, and western Pennsylvania; 15 meant Ohio; 22 meant St. Louis, Missouri; and, 64 meant Louisville, Kentucky, southern Illinois, western and central Tennessee, central and southern Indiana, and eastern Missouri. Wire Products also limited the panel to members of the American Arbitration Association. The Union did not sign these requests and did not forward them to the FMCS.

The Union submitted two panel requests setting forth "20" on each as a special requirement. These requests, dated, respectively, July 30 and August 2, did not meet with Wire Products' approval. In its affirmative defenses, Wire Products argued that the Union's conduct showed that the parties agreed on the interpretation of the arbitration provisions of the current contract's article XXIII. Under FMCS's code 20 is the designation for Wisconsin.

The Union has refused to agree to Wire Products' special requests on 21 panel request forms. Consequently the Union has not advanced any grievances to arbitration at Wire Products. I find from VandeKolk's uncontradicted testimony that selection of arbitrators from locales, which Wire Products has designated in the panel request forms would "drastically increase the cost of going through the arbitration process." In supporting this assertion, VandeKolk credibly testified as follows:

> The contract requires we split the cost, and normally if an arbitrator comes from New York they're going to spend a day or two of travel, more than likely they're going to have an airline ticket, more than likely they're going to have an additional night or two of stay in a hotel in addition to the hearing process itself, return travel, and that just adds onto the cost versus somebody that can drive six hours from Minneapolis, for example, or Chicago.

According to VandKolk, the language "experienced arbitrators," as used in the arbitration procedure set forth in article XXIII, does not require selection of members of the American Arbitration Association. In his view, the Union interprets "experienced arbitrators" to mean "someone that's been in this business and has done certain amount of time as an arbitrator."

I find from the testimony of Union Representative Cveykus, that the Union approached Wire Products about consolidating five discharge grievances into one arbitration proceeding. All five cases involved employees who had suffered discharge for failing to respond within 3 days to a recall by Wire Products. At a meeting with Wire Products' consultants Summers and LePage, Union Representatives Cveykus and VandeKolk suggested consolidation of the five grievances in a single arbitration. Wire Products' representatives rejected the suggestion, insisting upon a separate arbitration proceeding for each grievance.

2. Analysis and conclusions

The General Counsel contends that Wire Products' practice of imposing its special requirements, as conditions for selecting an arbitrator are unilateral modifications of its collective-bargaining agreement with the Union. The General Counsel goes on to urge me to find that by making these modifications without the Union's consent, Wire Products has violated Section 8(a)(1) and (5) and Section 8(g) of the Act. Wire Products contends that its special requirements did not violate those sections of the Act. In support of this contention, Wire Products argues that the arbitration procedure in article XXIII of its contract with the Union provides, prohibits neither the selection of

arbitrators from any of the geographic areas of the United States nor the selection of arbitrators from the American Arbitration Association's list. Thus, according to Wire Products, it did not modify its contract with the Union by its special requirements. I disagree with Wire Products' contention that its imposition of special requirements did not violate the existing contract and its obligation to bargain in good faith in accordance with Section 8(g)(2) of the Act.

In deciding whether Wire Products' imposition of geographic restrictions and a limitation of choice to AAA members violated the Act, the ultimate issue is whether these limitations constituted unilateral modifications of contractual terms and conditions of employment during the effective period of the contract. *Southwestern Electric,* 274 NLRB 922, 926 (1985). Here, the contract does not require that the panel of seven experienced arbitrators originate from any specific geographic area of the United States or that they be members of the AAA or any other organization of professional arbitrators. Nor does the contract condition arbitration on the satisfaction of any geographic limitation or membership requirement, which either party might wish to impose. Instead panel selection is limited only to "experienced arbitrators." Thus, I find that by its repeated insistence upon selection of arbitration panels from four designated FMC areas of the United States, and the limitation of those selections to members of the AAA, Wire Products has unilaterally changed the arbitration provisions of its contract with the Union, without obtaining the Union's consent and has violated the contract, all in violation of Section 8(g)(2) and Section 8(a)(5) and (1) of the Act. *Southwestern Electric,* 274 NLRB at 927.[12]

E. Wire Products' Unilateral Changes in the Unit Employees' Workday and Workweek

1. The facts

a. October 31 and November 7

On or about October 22, Darryl Graf, Wire Products' general manager, advised Carol Albright, the chairperson of the Union's bargaining committee, and her associate, Diane Lemanski, that he intended to reduce the unit employees' workdays. Graf's stated reason for this reduction was that he did not have enough work for them. Carol Albright quickly advised the Union's business agent, James Cveykus, of Graf's stated intention.

Cveykus contacted General Manager Graf on the following day and asked about his intention to reduce the workweek from 4 to 3 days. Graf answered yes, adding that there was not enough work to keep all the employees busy for a 4-day workweek. Graf said that management had checked with Wire Products' attorneys, who said the Company had the right to reduce the workweek. Cveykus warned that if Graf changed the workweek to 3 days, the Union would grieve and file unfair labor practice charges with the Board.

Continuing, Cveykus reminded Graf that the contract had a layoff procedure to be used when there is not enough work to keep all the unit employees busy. Cveykus also pointed out that the parties had used the layoff procedure in the past. Graf replied that his attorneys had told him that he could reduce the workweek to 3 days without negotiating with the Union. Cveykus repeated his threat to file a grievance and an unfair labor practice charge. Graf said okay.

Graf went on to warn that if the Union opposed his reduction of the workweek to 3 days, he would use the call-in provision in the collective-bargaining agreement. Article XII, section 1 of that agreement provides: "Employees called or required to report, and do report, for work when no work is available will be paid at a minimum of four (4) hours pay." Cveykus challenged Graf's intended use of the call-in provision. Cveykus warned of another grievance and another unfair labor practice charge. As Cveykus read the provision, it did not apply to a planned shutdown. He argued that the intent of the call-in provision was to provide a minimum of 4 hours of to employees who suffer a loss of wages because of the shutdown of the plant's electricity or some other emergency ending the workday prematurely.

Again, Graf insisted he had to go to a 3-day workweek. Cveykus suggested that Wire Products put its proposal for a 3-day workweek, with a timeframe, of a week, 2 weeks or a month, in writing. There was further discussion of Graf's proposed 3-day week and the Union's need for a written proposal. Graf suggested that Cveykus contact Wire Products' attorneys.

Cveykus quickly followed Graf's suggestion and phoned Stephen D. LePage of R. T. Blankenship & Associates. As Cveykus and LePage exchanged greetings, LePage excused himself from the conversation to deal with a call from Graf. Approximately 30 minutes later, LePage phoned Cveykus and the two discussed Graf's 3-day week proposal.

LePage and Cveykus argued about whether the collective-bargaining agreement's management-rights clause permitted Wire Products to implement a 3-day week without the Union's consent. Cveykus insisted that Wire Products could not reduce the workweek to 3 days and that Graf could use the contract's layoff procedure to reduce the work force. Cveykus asked for a written proposal from Wire Products "with somebody's signature on it who has the authority to change this." LePage rejected this request and the two continued to argue about the need to put the proposal before the unit employees for their approval. LePage asked what it would take to go to a 3-day workweek. Cveykus replied that he needed a written proposal and verification of Graf's production numbers. LePage suggested that Cveykus contact Graf, verify the production figures, and then get back to LePage.

Cveykus quickly contacted Graf and arranged to visit the plant on the following day, October 31. Cveykus and his supervisor, Mick Burnell, met with Graf and Time Management Coordinator Neil Christensen at the plant, as scheduled and reviewed the production situation. Cveykus was convinced that Wire Products "didn't have many orders." He told Graf and Christensen that he understood what they were saying. Graf asked when the Union could arrange a vote on the third day. Cveykus replied that as soon as Wire Products came up with a written proposal signed by a duly authorized person, the Union would submit it to the employees for a vote. Graf advised Cveykus to get in touch Wire Products' attorneys "because only Blankenship . . . has the authority to change it."

[12] In his brief, the General Counsel suggests that Wire Products' refusal to consolidate grievances involving discharges in the same arbitration was a further unlawful burden on the Union. However, there was no allegation in the consolidated complaints that such insistence was unlawful. Although this refusal was fully litigated and briefed, I find that the contract expressly permits either party to reject such consolidation. I find that Wire Products' rejection of consolidation did not violate the Act.

Cveykus tried unsuccessfully to contact LePage by telephone on the same afternoon, October 31, and on the following day. On each occasion, he asked the person answering the phone to have LePage return his call. On November 4 or 5, LePage returned Cveykus' call. Cveykus reported that he had verified the production numbers and had no problem with them. LePage answered: "Well, good. Then we can sign this." Cveykus disagreed that he could sign anything. He repeated his request for a written proposal with a stated time limit and the signature of someone who had authority to change the contract. LePage refused this request and insisted that Wire Products had the right to reduce the workweek under the contract's management rights clause.[13]

On October 31, Wire Products permitted the unit employees to work only 4 hours and then sent them home. On the same day, General Manager Graf posted a notice to the employees at the Merrill plant, which announced: DUE TO A SHORTAGE IN PRODUCTION WE WILL BE GOING TO A THREE-DAY WORKWEEK. STARTING THE WEEK OF NOVEMBER 4, 1996. Pursuant to this announcement, the employee did not work on November 7. I find from Neil Christensen's testimony that after November 7, Wire Products returned to a 40-hour week.

I find from Christensen's and LePage's testimony that Wire Products relied on the call-in provision in article XII of the collective-bargaining agreement as its authorization to limit the employees to 4 hours of work on October 31. I also find from their testimony that Wire Products relied upon the management clause as authority for its decision to shut the plant down on November 7.

The Union filed grievances complaining of both the shortened day on October 31 and the 1-day shutdown on November 7. In its response dated November 22, Wire Products denied these grievances on the ground that article XXIV, §1 of the current collective-bargaining agreement authorized its conduct in both instances. Wire Products' response provided the following explanation of its position:

> According to Article XXIV, §1, the company has the right to, among other things, "establish, increase and/or decrease the number of work shifts and/or ending times."
>
> Such language clearly gives the company the right to engage in the conduct, which is the subject of the above grievances. For the CBA to be construed otherwise would require the company to operate four ten-hour days regardless of business demands. Such an interpretation, it is submitted, is not contemplated by the CBA.
>
> For the foregoing reasons, grievances #27 and #28 are denied.

The record shows that Wire Products has used the collective-bargaining agreement's layoff provisions on many occasions since February 26. Such layoffs have occurred on occasions when Wire Products did not have sufficient work for the bargaining unit employees. When the quantity of work increased sufficiently, Wire Products would recall the employees in accordance with the contract's layoff procedure.[14] I also find from Cveykus' testimony, that during his 4 years as a business representative, he has observed that, as matter of practice, employers implement contractual layoff procedure when they lack sufficient work "to keep everybody busy."

At this point, I find that reference to appropriate portions of the current collective-bargaining agreement is necessary to appraise Wire Products' response to the Union's grievances. Initially, I note that article V, section 1 of the collective-bargaining agreement provides: "The work week shall be four (4) days, Monday through Thursday inclusive. The work day shall be ten (10) hours per day." Section 5 of article V declares that the first shift's starting time shall be 6 a.m. and that quitting time for that shift shall be 4:30 p.m. The same section of article V establishes a second shift with a starting time of 4:40 p.m. and a quitting time of 3:10 a.m. Article XXIV, section 1, referred to in Wire Products' response to the two grievances, provides:

> It is agreed that (except as restricted by the terms of this Agreement) the Employer retains the sole right to manage the affairs of the business and to direct the working forces of the Company. Such functions of management include but are not limited to: hire, promote, layoff, demote, assign, and transfer employees; discipline and discharge employee for just cause (see Addendum A); select and determine the number of employees, including the number of employees assigned to any particular work; determine the location and type of operation; determine and schedule overtime; install and remove equipment; determine the methods, procedures, materials to be handled or utilized or to discontinue such use; hire temporary employees; subcontract work; promulgate, post and enforce reasonable work rules; select supervisory employees; train employees; introduce new and improved method(s) of operation; establish, increase and/or decrease the number of work shifts and their starting and/or ending times; to make consolidation, discontinue or create departments or job classification(s); establish and determine job content and qualifications; set standards of performance and in all respects carry out, in addition, the ordinary and customary functions of management.

In their testimony, Graf and LePage asserted that Wire Products relied upon article XII, section 1, the call-in provision as authority for shutting the plant down after only 4 hours of work on October 31. Grand Lodge Representative Daniel VandeKolk testified that in his view, this provision requires Wire Products to pay employees at least 4 hours' wages when they report to work as scheduled and are sent home after management suddenly finds there is not enough work available for the full 10-hour day. VandeKolk has been involved in negotiating collective-bargaining agreements since 1994 and participated in the negotiations, which resulted in the contract involved in these cases. The language of article XII, section 1, is as follows: "Employees called or required to report, and do report, for work when no work is available will be paid at a minimum of four (4) hours pay."

[13] My findings regarding the discussions regarding the shutdowns on October 31 and November 7, between Cveykus and LePage, and Cveykus and Graf are based upon Cveykus' uncontradicted testimony. Graf did not testify. LePage's testimony did not conflict with Cveykus's regarding these discussions.

[14] My findings regarding Wire Products' implementation of the layoff procedure in the collective-bargaining agreement are based upon Cveykus' uncontradicted testimony.

b. The Christmas shutdown

On October 30, the Union received a letter from Stephen D. LePage announcing that Wire Products "will be shutting down for the Christmas holiday season; the last day of work will be December 19, 1996 and the workforce will return to work on January 6, 1997." LePage had addressed the letter to Business Representative Cveykus. In closing, LePage invited Cveykus to contact him if he wished to discuss the matter "at greater length."

Upon receipt of LePage's Christmas shutdown letter, or within 2 days after October 30, Cveykus phoned LePage and protested that the contract had no provision for the proposed shutdown. LePage replied that Wire Products was shutting down for the holiday because there was insufficient work. When Cveykus challenged Wire Products' claimed authorization to have a holiday shutdown, LePage raised the management-rights provision. Cveykus insisted that Wire Products used the contract's layoff provision. LePage said he would get back to Wire Products on this matter.

Cveykus and LePage again joined issue on the holiday shutdown during a discussion of grievances, on November 14. LePage insisted that Cveykus could approve the holiday shutdown without a vote by the bargaining unit employees. Cveykus rejected this notion, insisting on a written proposal, signed by an authorized Wire Products representative. LePage argued that the management-rights clause in the collective-bargaining agreement permitted Wire Products to shut down whenever it decided to do so, without the assent of the Union. Cveykus replied that if there was insufficient work for the employees, Wire Products must use the contractual layoff procedure. If Wire Products implemented its Christmas shutdown, Cveykus warned that he would file an unfair labor practice charge and a grievance.

In a letter to the Union dated November 18, LePage, on behalf of Wire Products, announced:

> The company is proposing a Christmas shutdown for the holiday season; specifically, the last day of work would be December 19, 1996 and the first day that operations would resume would be January 6, 1997.
>
> Please advise me as soon as possible regarding the union's position.
>
> Thank you.

On November 20, Cveykus phoned LePage, reported that he had received the letter of November 18 and asked if this was Wire Products' proposal to be voted on by the employees. LePage confirmed that it was Wire Products' proposal. Cveykus said he would take it to the membership for a vote. LePage wanted to know how soon. Cveykus said he would arrange for a meeting on the following Monday, November 25. LePage accepted November 25 as the date for obtaining the employees' approval of Wire Products' proposal and told Cveykus to call General Manager Graf and arrange to post a meeting notice at the plant.[15]

Cveykus phoned Graf on November 20, to arrange to post the Union's notice later, in the afternoon. However, Graf insisted that Cveykus bring the notice to the plant in the morning. Cveykus brought the notice to the plant as Graf had requested. Graf insisted on posting the notice, himself. I find from Carol Albright's testimony that the notice of the Union's meeting scheduled for November 25 appeared on its plant bulletin board on Thurday, November 21. The notice announced a union meeting to be held above the S&S Bar, in Merrill at 4:30 p.m., Monday, November 25. The announced purpose of the meeting was to vote on the following:

> The Company is proposing a Christmas shutdown for the holiday season; Specifically, the last day of work would be December 19, 1996 and the first day that operations would resume would be January 6, 1997.

In memorandum dated November 22, addressed to "All Employees," Wire Products' Vice President Bob Hill provided another perspective of the Union's meeting. I find from Albright's testimony that Hill's memorandum was posted at the plant just prior to the Union's meeting. The memorandum provided the following explanation:

> As you know, there is to be a vote on the Christmas shutdown. The Company neither approves nor condones the vote scheduled for Monday. It is the Company's position that the CBA allows for such a shutdown and that a vote is neither necessary nor called for under the CBA.
>
> The company did notify the union of the proposed shutdown and the Company asked for the union's input. The union responded by calling this vote on its own; the Company has nothing to do with the vote.
>
> Some people may tell you that you must be a union member to vote on Monday. This is true. In the spirit of democracy, the Company would encourage the union to let all employees who attend vote because this affects everyone. However, the union does have a right to limit the vote to dues paying union members.
>
> Again so it is clear, the union vote is neither approved by nor condoned by the Company–this is a matter the union, on its own, believes needs to be vote on.
>
> Thank you.

On November 25, Wire Products, without waiting for the outcome of the Union's meeting, posted a notice at the plant announcing the Christmas shutdown. The last day of work would be December 19 and the last day of the shutdown would be January 6, 1997.[16]

2. Analysis and conclusions

To resolve the issues presented here, whether Wire Products violated Section 8(d), and Section 8(a)(5) of the Act by unilaterally reducing the bargaining unit employees' hours of work on October 31, reducing their workweek to 3 days by a shutdown on November 7, and by imposing a shutdown on them from December 19 until January 6, 1997, I must determine whether the current collective-bargaining agreement authorized such unilateral conduct. Thus, I must examine the contract to

[15] In his testimony, LePage disputed Cveykus' testimony that Wire Products had proposed a Christmas shutdown. However, I note that in its answer in Case 30–CA–13625, Wire Products admitted that LePage sent a letter to the Union proposing a Christmas shutdown. I also note that LePage's signature appears on a letter dated November 18, in which he asserted that: "The company is proposing a Christmas shutdown for the holiday season.'' These circumstances, and my impression that Cveykus was a frank and forthright witness, cause me to credit him rather than Le Page, where their testimony conflicted.

[16] My findings regarding Wire Products' notice of the Christmas shutdown and Robert Hill's memorandum are based on Carol Albright's uncontradicted testimony.

find the parties' intent with respect to Wire Products' authority to shut its plant down without the Union's consent. Wire Products' unilateral decisions regarding the length of the unit employees' workday and workweek, and the holiday shutdown involved material, substantial, and significant changes in terms and conditions of employment which are mandatory subjects of bargaining. *Rangeaire Co.,* 309 NLRB 1043, 1045–1046 (1992). If the contract did not afford Wire Products the necessary authority, its failure to obtain the Union's consent before carrying out the shutdowns, violated Section 8(a)(5), within the meaning of Section 8(d) of the Act. *Conoco, Inc.*, 318 NLRB 60, 63 (1995). In my endeavor to interpret the collective-bargaining agreement in these cases, I have been guided by the following statement of Board policy, *Mining Specialists, Inc.,* 314 NLRB 268, 268–269 (1994):

> In contract interpretation matters like this, the parties' actual intent underlying the contractual language in quotation is always paramount, and is given controlling weight. To determine the parties' intent, the Board normally looks to both the contract language itself and relevant extrinsic evidence, such as a past practice of the parties in regard to the effectuation or implementation of the contract provision in question, or the bargaining history of the provision itself. [Footnotes omitted.]

Article V, section 1 of the current contract between the Union and Wire Products declares that: "The work week shall be four (4) days, Monday through Thursday inclusive. The work day shall be ten (10) hours per day." Article VI entitled "Layoff and Recall" contains seven sections detailing a layoff and recall procedure. The General Counsel argues that the parties' intent in these provisions was to assure the bargaining unit employees that their normal workday would consist of 10 hours and that their workweek would be 4 days, but that if there were insufficient work for the unit employees Wire Products would use the layoff procedure followed by the recall procedure when work increased. Wire Products disagrees and urges that article XII, section 1, the call-in provision, permitted it to send its employees home after 4 hours of work on October 31, and that and portions of article XXIV, authorizing Wire Products to regulate the number and length of shifts permitted the shutdown on November 7 and the Christmas shutdown. I disagree with Wire Products' contentions

Turning to article XII, section 1, I find from the uncontradicted testimony of Daniel VandeKolk, who is familiar with the commonly accepted usage of the language of article XII, section 1 that this provision applies when Wire Products discovers that there is insufficient work for the unit employees after they have reported for work. Thus, it would not apply where, as here, Wire Products Time Management Coordinator Christensen knew on October 21, that on October 31, there would be insufficient work to keep the unit employees working more than 4 hours. The uncontradicted testimony of the Union's business representative, Cveykus, shows that on other occasions, when Wire Products contemplated such an insufficiency in unit work, it implemented the layoff procedure in article VI of its contract with the Union. Accordingly, I find no merit in Wire Products' argument that the call-in provision authorized its unilateral decision to limit the unit employees' workday to 4 hours on October 31.

Equally without merit is Wire Products' position that the management-rights provisions in article XXIV of the contract permitted it to ignore the Union and the contract's layoff procedure on November 7 and when it imposed the Christmas shutdown. As I read article XXIV, sections 1 and 2, Wire Products' management rights are subject to limitation by other provisions of the contract. One such provision is section 1, article V which declares, without any qualification, that "[t]he work week shall be four (4) days, Monday through Thursday inclusive" and that "[t]he work day shall be ten (10) hours per day." As I read this provision together with the management rights to establish, increase, or decrease the number of shifts and their starting or ending times, as set forth in section 1, article XXIV and the limitations on these rights, I find that Wire Products' can exercise these rights within the confines of a 10-hour workday and a 4-day workweek.

Wire Products' repeated implementation of the collective-bargaining agreement's layoff procedure when faced with insufficient work strongly suggests that its management understood its contractual obligations under that circumstance. Here, the testimony of its Time Management Coordinator Chistensen shows that by October 21, he was aware that in the first week of November a layoff of unit employees would be warranted because of lack of work. In his testimony, Christensen admitted that under similar circumstances, Wire Products had consistently used the contractual layoff procedure. According to Christensen, on this occasion Wire Products decided that a layoff would cause economic hardship to the Company and its unit employees. However, the hardship envisioned by Wire Products did not excuse if from shouldering its statutory obligation, under Section 8(d) of the Act, to obtain the Union's consent before shortening a workday to 4 hours, reducing a workweek to 3 days and ignoring the layoff procedure in its haste to cut costs. *Mack Trucks, Inc.,* 294 NLRB 864, 865 (1989); *C & S Industries,* 158 NLRB 454, 457 (1966). I find that by shortening the workday on October 31, shortening the workweek by imposing a shutdown on November 7 and ignoring the contract's layoff provisions, Wire Products violated Section 8(a)(5) and (1) of the Act.

Nor do I agree with Wire Products contention that the management-rights provisions permitted it to impose a Christmas holiday layoff on the unit employees without bargaining collectively and obtaining the Union's consent. According to Wire Products, as the matter of Christmas shutdowns was not covered in the collective-bargaining agreement, it was free to impose such a shutdown on the bargaining unit, under sections 1 and 2 of article XXIV of the collective-bargaining agreement, What I have stated above regarding the impact of section 1's shift provisions upon the contractual requirements of a 10-hour workday and a 4-day workweek is equally applicable here. Thus, I find that Wire Products' authority to manage the number and length of work shifts is limited by those two requirement.

I also find that Wire Products reliance upon section 2 of the management-rights clause is misplaced. According to Stephen LePage's testimony, section 2 declares that "anything not covered in the agreement like Christmas shutdown reverts to management rights." Section 2 of article XXIV entitled "Management Rights" states:

> The Employer, in the exercise of its rights and prerogatives shall observe the provisions of this Agreement where and to the extent that such rights are expressly limited by this Agreement. The Employer in exercising any right or prerogative in any particular way shall not be con-

> strued as a waiver of its right to exercise such right or prerogative or preclude the Employer from exercising the same in some other fashion so long as it does not conflict with the provisions of this Agreement.
>
> This Agreement is subject to amendment, alteration or addition only by the subsequent written agreement between and executed by the Employer and the Union. The employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered in this agreement even though such subject or matter may not have been within the knowledge or contemplation of either or both parties at the time they negotiated or executed this agreement. The provisions herein relating to the terms and conditions of agreement supersede any and all prior agreements and past practices concerning the terms and conditions of employment inconsistent with these provisions.

Upon reading and analyzing the quoted section, I note that it limits Wire Products' exercise of any right or prerogative "to the extent that such rights are expressly limited by this Agreement." Section 2 also cautions Wire Products that it may exercise its rights or prerogatives so long as such exercise "does not conflict with provisions of this Agreement." I find that Wire Products' unilateral decision to impose a Christmas shutdown conflicted with article V, section 1, which provided for a 4-day workweek and a 10-hour workday. I also find that this shutdown was in conflict with the layoff and recall procedures expressed in article VI of Wire Products' collective-bargaining agreement with the Union. I further find, therefore, that the management provisions cited by LePage and Wire Products did not permit Wire Products to impose the Christmas shutdown from December 19 until January 6, 1997, which was a material substantial and significant change in their terms and conditions of employment, without the Union's consent. Here, after sending a proposal for a Christmas shutdown to the Union, and with knowledge that the Union was seeking the approval of its members, Wire Products did not wait for that approval. Instead, Wire Products announced the shutdown on November 25, prior to the Union's meeting, scheduled for 4:30 p.m., on that same day. Thus, I find that by making that announcement, Wire Products showed it had made a unilateral decision to shut the plant from December 19 until January 6, 1997, and had violated Section 8(a)(5) and (1) of the Act.

F. The Wage Rate for a New Classification

1. The facts

In June 1997, representatives of Wire Products and the Union discussed the establishment of a new training classification in the bargaining unit. Wire Products' representative, Rayford T. Blankenship, proposed a maximum hourly wage of $7.45 for each training position. The Union had misgivings about setting maximum wage rate. The union representatives at this discussion included Cveykus, VandeKolk, and employees Carol Albright and Linda Wendt. The Union asked Wire Products to put this proposal in writing for submission to the membership. On June 18, Cveykus asked Stephen LePage for the written proposal on the trainer classification. LePage said he had been too busy to write it up but would do so in the near future and send it to the Union for presentation to the membership for approval.

The next time the proposed training classification surfaced was on July 8, 1997. On that date, employee Linda Wendt noticed a posting on a bulletin board, at the Merrill plant, for a welder trainer. Wire Products admitted on the record that on or about July 8, 1997, acting through Darrel Graf, it "posted a job vacancy in the newly created job classification of trainer." Wendt told Carol Albright about the notice. On the same day, Albright passed the information on to Cveykus, who contacted General Manager Graf and asked why Wire Products had posted the new classification while negotiations regarding it were under way. Graf answered that attorney, Ray Blankenship had said that Wire Products had a right to post it, and therefore it was being posted.

During the same day, Cveykus, VandeKolk, and another union representative, Joe Cooper, encountered Rayford T. Blankenship. Cooper questioned the posting of the new trainer classification position. Blankenship replied: "[Y]ou do what you're going to do and I'm going to do what I want to do." Nothing more was said at that juncture.

The Union reacted to the posting of the trainer position by filing the unfair labor practice charge in Case 30–CA–13896 on July 9, 1997, and a grievance on the following day. Both the charge and the grievance alleged that Wire Products had unilaterally implemented a wage rate for a new classification. On July 17, 1997, Wire Products answered the grievance. Wire Products argued that article XXIV, the management-rights provision allowed it to create the new job classification. In the same answer, Wire Products agreed to negotiate with the Union "concerning the wage rate for the new classification." However, on August 5, at the hearing, Wire Products, in an oral answer to the complaint in Case 30–CA–13896, admitted posting a job vacancy in the newly created trainer classification, but denied complaint allegations that it posted the job vacancy with notice to the Union and without giving the Union an opportunity to bargain about the new classification, its qualifications, its labor grade and wage rate. In the same oral answer, Wire Products denied the following complaint allegation:

> After the Union filed a grievance and the unfair labor practice charge in Case 30–CA–13896, Respondent [Wire Products] replied to the grievance on July 17, 1997, and agreed to negotiate with the Union concerning the wage rate for the new classification.

I find from Cveykus's testimony that after receiving Wire Products' answer to the grievance in this matter, he contacted R. T. Blankenship & Associates and spoke to Rayford Blankenship about the trainer classification. Blankenship insisted that the management-rights provisions of the contract permitted Wire Products to establish the trainer classification and its wage rate. However, in the interest of settling the grievance, Blankenship offered to negotiate the wage rate with the Union. Blankenship turned the discussion over to his associate, Stephen LePage. Cveykus insisted that he needed a written proposal to take to the Union's members for their approval. On July 25, the Union received a written proposal, including a maximum wage rate, covering the trainer classification. However, there is no showing that the parties have reached agree-

ment regarding trainers.[17] There was no showing that the notice of the new trainer classification job opening, which General Manager Graf posted at the plant on July 8, 1997, mentioned a wage rate.[18]

The management-rights provisions linked to the issues raised here are found in sections 1 and 2 of article XXIV of the current collective-bargaining agreement covering the Merrill plant. Wire Products' authority to establish classifications flows from section 1, which states, in pertinent part:

> It is agreed that (except as restricted by the terms of this Agreement) the Employer retains the sole right to manage the affairs of the business and to direct the working forces of the Company. Such functions of management include but are not limited to: . . . make consolidations, discontinue or create departments or job classification(s); establish and determine job content and qualifications; set standards of performance and in all respects carry out, in addition, the ordinary and customary functions of management.

Section 2 of article XXIV limits Wire Products' exercise of its management rights as follows: "The Employer, in the exercise of its rights and prerogatives shall observe the provisions of this Agreement where and to the extent that such rights are expressly limited by this Agreement."

Article VII, section 1 (a) of the collective-bargaining agreement prescribes the procedure for posting and filling a new job or a vacancy in "an established job." Article VII, section 1(c) requires that "An employee will be paid that rate specified for the job."

Article XXIX, entitled "Wages" provides for three annual increases in the wages of unit employees and sets forth hourly wage rates for unit job classifications divided into three labor grades. This provision also shows the starting rate for each unit classification, which existed at the time the contract was executed, followed by three annual increases. The table does not show any wage rate for trainers.

2. Analysis and conclusions

The General Counsel contends that Section 8(d) and Section 8(a)(5) of the Act required that Wire Products negotiate with the Union and obtain its consent to the new wage rate for the new trainer classification. The record shows that Wire Products did not obtain such consent before posting the notice of job openings in a new trainer classification and inviting unit employees to apply for them. Contrary to Wire Products, I find merit in the General Counsel's contention.

There is no dispute over Wire Products' right under the management-rights clause of the contract to establish that classification in the bargaining unit. Nor is there any doubt that the matter of the trainers' wage rate was a material, substantial, and significant element in their terms and conditions of employment. Indeed, the contract requires that a unit employee "be paid that rate specified for the job." There was no showing that the contract's management-rights provisions grants unilateral authority over the establishment of a wage rate for a new classification to be reflected in the wage table found in article XXIX. Accordingly, I find that Wire Products violated its bargaining obligation under Section 8(d) of the Act, and thereby violated Section 8(a)(5) and (1) of the Act by establishing a wage rate for the new trainer classification, without obtaining the Union's consent to the amount.

I also find that Wire Products' violations of Section 8(a)(1) of the Act, and of its obligation under Section 8(d) of the Act to obtain the Union's consent to alterations of the terms and conditions of employment established by their contract, show a design to frustrate the unit employees' efforts to engage in collective bargaining. Accordingly, I further find that Wire Products has engaged in overall bad-faith bargaining, designed to frustrate the collective-bargaining process in violation of Section 8(a)(5) and (1) of the Act. *Bradford Coca-Cola Bottling Co.*, 307 NLRB 647 (1992).[19]

The record does not reveal the rate or rates of pay, which Wire Products fixed for the employee or employees in the new trainer classification. However, I must assume from my common sense that the employee or employees in this classification are working for wages set by Wire Products. Accordingly, I find no merit in Wire Products' contention that I must dismiss the complaint in Case 30–CA–13896 because of the General Counsel's failure to show what wage rate or rates were established unilaterally for the new classification.

[17] The record shows that Wire Products provided the same proposal to the Regional Director for Region 30 on June 12, 1997.

[18] At the hearing in these cases on August 5, 1997, Wire Products requested me to take notice that James Cveykus had violated my sequestration order which had been in effect since the first day of the hearing, on July 8, 1997. Specifically, Wire Products asserted that Cveykus, who had just been recalled by the General Counsel, had been seated at counsel table during the morning and afternoon, on August 5. During that time, Cveykus heard employee Wendt testify about seeing the posted notice of the the new trainer classification. Cveykus' testimony on the afternoon of August 5, 1997, concerned his dealings with Wire Products' representatives and his efforts to enter into negotiations about the new classification's wage rate. This testimony was uncontradicted and largely corroborated by exhibits received in evidence. Thus, I find that the breach of my sequestration order did not prejudice Wire Products. Accordingly, I have considered Cveykus' testimony regarding Wire Products' establishment of the new classification's wage rate or rates. As this testimony was uncontradicted and largely corroborated documents received in evidence, I have credited Cveykus here. *Seattle Seahawks*, 292 NLRB 899, 908 (1989).

[19] The General Counsel requests that I find and conclude that Wire Products engaged in conduct before me which was "frivolous and a sham." Specifically, the General Counsel complains that Wire Products filed pleading containing denials of fact which had no evidentiary support, asserted affirmative defenses which had no support in fact or in law, serving a subpoena upon and personally attacking counsel for the General Counsel, and serving a subpoena upon her, and by serving subpoenas upon the Union seeking documents to which Wire Products was not entitled under applicable law, including Board regulations.

There were aspects of Wire Products' conduct during these proceedings which were open to criticism, Wire Products' representatives raised affirmative defenses which I found to be without merit and made unwarranted comments that counsel for the General Counsel had acted as an agent for the Union. I quashed the subpoena duces tecum served upon counsel for the General Counsel and partially quashed the subpoenas duces tecum which Wire Products served upon the Union. However, I do not find that Wire Products' representatives undertook any of the conduct complained of in a flippant manner or without serious intent. In their effort to represent their client, Wire Products' representatives may have been somewhat extravagant in their effort. However, although debatable, the matters complained of by the General Counsel did not warrant a finding that Wire Products' conduct before me was frivolous.

CONCLUSIONS OF LAW

1. The Respondent, Wire Products Manufacturing Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, District No. 200, International Association of Machinists and Aerospace Workers, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees employed by Wire Products at its Matthew's and Genesee Street operations in Merrill, Wisconsin; but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material to these cases, the Union has been the exclusive collective-bargaining representative of all the employees in the appropriate unit described above.

3. By encouraging employees to join the Union on February 6, and to resign their membership after a scheduled union meeting, Respondent has violated Section 8(a)(1) of the Act.

6. By telling employees on February 5 that they would not have to pay money to the Union under the contract if they did not want to, Respondent violated Section 8(a)(1) of the Act.

7. By disseminating a notice to employees on February 26, advising them to join the Union for purposes of attending a union meeting, to vote against a proposed collective-bargaining agreement, and then to revoke their membership on the following day, Respondent violated Section 8(a)(1) of the Act.

8. Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act by:

(a) Eliminating limited family class health insurance since March 13, without first obtaining the Union's consent.

(b) Disseminating a memorandum to the bargaining unit employees on April 24, stating that the collective-bargaining agreement did not require that they pay money to the Union.

(c) Since August 9, failing and refusing to comply with article I, section 4 of the collective-bargaining agreement, which requires that Respondent terminate unit employees who have not met the contractual payment requirements.

(d) Since August 5, altering, without the Union's consent, the collective-bargaining agreement's arbitration provisions by submitting requests for arbitration panels to the Federal Mediation and Conciliation Service in which it insists, as special requirements, that panels be selected only from areas numbered 15, 22, 35, and 64, none of which include the State of Wisconsin, and that the members of the panels be members of the American Arbitration Association.

(e) Unilaterally, without the Union's consent, reducing the bargaining unit employees' workday on October 31, from 10 to 4 hours.

(f) Unilaterally, without the Union's consent, reducing the bargaining unit employees' workweek of November 4 from 4 to 3 days, by not working them on Thursday, November 7.

(g) Imposing a Christmas shutdown on the bargaining unit employees from December 20 until January 5, 1997, unilaterally, and without the Union's consent.

(h) Repudiating the contractual layoff procedure on October 31, on November 7, and when it imposed the Christmas shutdown, from December 20 until January 5, 1997.

(i) Unilaterally, without the Union's consent, establishing a wage rate for the newly created bargaining unit job classification of trainer, which it announced on July 8, 1997.

(j) Refusing to bargain collectively in good faith concerning wages, hours, and other terms and conditions of employment with the Union

(k) The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent unilaterally terminated its family class for health insurance and converted its former family class members to full family coverage, effective for the pay period ending March 16, 1996, I shall order that Respondent rescind that change and reimburse those employees in the amount of the increase in the premiums, which they paid on and after March 21, 1996.

I shall also order Respondent to make whole the bargaining unit employees for any loss of earnings and other benefits suffered as a result of its unlawful failure to comply with its collective-bargaining agreement when it shortened the workday to 4 hours on October 31, shut the plant down on November 7, imposed the Christmas shutdown, and repudiated the contractual layoff procedure. Any amounts of money necessary to make employees whole under the terms of this portion of the remedy shall be computed in accordance with *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest thereon computed in accordance with *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[20]

ORDER

The Respondent, Wire Products Manufacturing Corporation, Merrill, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively in good faith concerning wages, hours, and other terms and conditions of employment with the Union, District No. 200, International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full–time and regular part-time production and maintenance employees employed by Wire Products at its Matthew's and Genesee Street operations in Merrill, Wisconsin; but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

(b) Encouraging employees to join the Union and then to resign their membership after a scheduled union meeting.

(c) Telling employees that they do not have to pay money to the Union under the current collective-bargaining agreement if they do not want to.

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[20] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Disseminating notices to employees, advising them to join the Union for purposes of attending and participating in a union meeting, and then to revoke their membership on the following day.

(e) Eliminating limited family class health insurance or otherwise altering benefits provided in the current collective-bargaining agreement, without first obtaining the Union's consent.

(f) Disseminating memoranda or other communications to the bargaining unit employees, stating that the collective-bargaining agreement does not require that they pay money to the Union.

(g) Failing and refusing to comply with article I, section 4 of the collective-bargaining agreement, which requires that Respondent terminate unit employees who have not met the contractual payment requirements.

(h) Altering, without the Union's consent, the collective-bargaining agreement's arbitration provisions by submitting requests for arbitration panels to the Federal Mediation and Conciliation Service in which Respondent insists, as special requirements, that panels be selected only from areas numbered 15, 22, 35, and 64, or from other areas, none of which include the State of Wisconsin, and that the members of the panels be members of the American Arbitration Association.

(i) Unilaterally, without the Union's consent, reducing the bargaining unit employees' workday.

(j) Unilaterally, without the Union's consent, reducing the bargaining unit employees' workweek.

(k) Unilaterally, without the Union's consent, imposing a Christmas shutdown at its Merrill plant.

(l) Repudiating the contractual layoff procedure.

(m) Unilaterally, without the Union's consent, establishing wage rates for newly created job classifications.

(n) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request of the Union, restore the limited family class to the health Insurance program covering the bargaining unit employees, and enroll the bargaining unit employees, who are eligible, into that class of health insurance coverage.

(b) Reimburse employees for the excess premium payments that they were required to pay as a result of the unilateral elimination of the limited family class of health insurance by Respondent beginning with the pay period ending March 16, 1996, with interest.

(c) Make the bargaining unit employees whole, in the manner described in the remedy section of this decision, for any loss of earnings and other benefits suffered as a result of its unlawful failure to comply with the collective-bargaining agreement, when it shortened the workday to 4 hours on October 31, shut the plant down on November 7, imposed the Christmas shutdown, and repudiated the contractual layoff procedure, plus interest.

(d) Preserve and, within 14 days of a request, make available to the Board or Its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its plant in Merrill, Wisconsin, copies of the attached notice marked "Appendix."[21] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 21, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[21] If this Order is enforced by a Judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."